

RICHARD PLATT, ET AL.

IBLA 70-10      Decided March 22, 1971

Desert Land Entry: Applications

Applications for desert land entry are properly held for rejection because the applicants' proposed plan of irrigation is not economically feasible.

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IBLA 70-10: Wyoming 035862, etc.

RICHARD PLATT, ET AL.

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: Desert land applications  
: rejected  
:  
: Affirmed

#### DECISION

Richard Platt and others 1/ have appealed to the Secretary of the Interior from a decision dated July 31, 1968, by which the Office of Appeals and Hearings, Bureau of Land Management, affirmed a decision of the Wyoming land office, dated May 10, 1968, rejecting their applications to make desert land entries because the proposed irrigation plan was not feasible. 2/

The Bureau's appeal decision pointed out that all the components of an irrigation system need not be completed before an entry is allowed. However, it found that appellant's proposal to irrigate the lands with water from the Upper Canal, a branch of the Routh Ditch, is not feasible because their proposed irrigation system could not carry sufficient water to maintain an adequate water supply to irrigate the proposed entries. The inadequacy of the system was demonstrated by its failure to furnish sufficient water to irrigate all of the lands in entries which have been patented, but only for that portion of land in the entries capable of being irrigated from the Upper Canal.

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1/ James Benson, Wyoming 040704; Mark Routh, Wyoming 040705; May Routh, Wyoming 040706; Eva Whitesell, Wyoming 040707; Dorcie Whitesell, Wyoming 040708; Kay Benson, Wyoming 040709.

2/ The N 1/2 SW 1/4 section 8, T. 32 N., R. 107 W., 6th P.M., Wyoming, was classified for multiple use management and segregated from appropriation under the agricultural land laws, including the homestead, desert land and public sale laws, 43 U.S.C. §§ 161, et seq., 321 et seq., and 1171 (1964), and from appropriation under the general mining law, 30 U.S.C. § 21, et seq., (1964), by an order published at 35 F.R. 8398, May 28, 1970. The NW 1/4 SW 1/4 section 8, T. 32 N., R. 107 W., is within application Wyoming 040705.

[\*62] The appellants contend that it is not necessary to construct the irrigation system completely prior to allowance of the desert entries, as the question of whether an irrigation system is properly or adequately constructed is a matter to be determined at time of submission of final proof. They request a hearing at which they offer to submit proof that there is sufficient water available to irrigate the entries sought. They submit, inter alia, a statement by A. A. Thompson, Water Commissioner, to the effect that the Routh Ditch, at its headgate on Boulder Creek, carried 40.93 cubic feet per second (c.f.s) of water on July 17, 1968, and a statement by Guy N. Bush, a hydrographer of the State of Wyoming, that the maximum capacity of the Routh Ditch at the headgate on July 15, 1968, was 44.96 c.f.s of water.

The Regulation, 43 CFR 2520.0-8(a)(1), 35 F.R. 9582, requires that it be determined whether any particular tract sought to be entered as desert land is in fact irrigable from the source proposed by the applicant, and 2520.0-8(d)(3) provides that in determining whether an entry can be allowed the authorized office of the Bureau of Land Management will take into consideration such factors as the topography of the applied for and adjacent lands, farming systems and practices common to the locality, private lands farmed by the applicant and practicability of farming the lands as economically feasible operating units.

The record indicates that Bureau personnel, in investigating the fact as to whether or not the land in question is irrigable from the source proposed by the applicants, assembled the material facts germane thereto. From their interpretation of this data they came to a considered and informed judgment that there is very little likelihood that sufficient water to irrigate can be developed and delivered to the land economically. Our review of the record brings us to the conclusion that the decision below was not in error in this respect.

The appellants have submitted no substantial or positive evidence that the Bureau decision is based on error of fact or judgment. Nor have the appellants shown that it is economically feasible to attempt development of the proposed entries. See Clifford D. Wilson, A-29287 (April 12, 1963).

The request for a hearing is denied as it appears improbable that such a hearing would develop any additional facts decisive of the issues involved here.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is affirmed.

Francis Mayhue, Member

We concur.

Martin Ritvo, Member

Joan B. Thompson, Alternate Member.

